IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8705 OF 2005

Dayanand Bajrang Inamdar & Ors. ..Petitioners.

Vs.

The State of Maharashtra & Ors. ..Respondents.

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Mr. N.V. Bandiwadekar for the Petitioners.

Mrs. M.P. Thakur, Assistant Government Pleader for Respondent Nos.1 and 2.

Mr. R.G. Ketkar for Respondent No.3.

Mr. Vinod Jadhav for Respondent Nos.5 and 6.

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CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

25th April, 2006.

P.C. (Per DR. D.Y. CHANDRACHUD, J.):

1. The Sixth Respondent is a government recognized and aided senior college conducted by the Fifth Respondent. The college is affiliated to Shivaji University, the Third Respondent to these proceedings. In May/ June 2000 an advertisement was issued by the college inviting applications from candidates for lecturers in various

subjects. The posts were reserved for scheduled caste candidates and it has been stated that each of the Petitioners belongs to a scheduled caste. Petitioners 1 to 4 who applied were interviewed by a local selection committee and their names were commended for appointment as lecturers. Appointment orders were thereafter issued to the petitioners on 20th June, 2000. Petitioners 1 to 4 were appointed as lecturers respectively in Political science, History, Hindi and Economics. The appointment of the First Petitioner was approved by the University on 22nd May, 2001. During the year 2001-02 an advertisement was issued on 13th June, 2001 in response where to each of the five Petitioners was called for interview. The interview, it may be noted, was to be conducted through a duly constituted University selection committee, but in the case of the First and Second Petitioners the subject experts did not remain present and the committee could not be constituted as envisaged. The First and Second Petitioners were issued appointment orders for the academic year 2001-02. In the case of Petitioner No.3 out of eight members of the University selection committee, the subject expert was not present, while in the case of Petitioners 4 and 5, two

members of the University selection committee were not present. Petitioners 3 to 5 were interviewed and upon selection, their names were recommended for appointment. Petitioners 3 to 5 were given appointment orders for academic year 2001-02. On 14th March, 2002 the university issued an order approving the appointment of the Petitioners for 2001-02. Thereafter the Petitioners were issued orders of appointment for academic years 2002-03 and 2003-04. The appointments were approved by the University subject to Government Resolutions dated 13th June, 2000 and 17th June, 2000.

2. By a Government Resolution dated 27th February, 1989 the qualifications for lecturers came to be revised with effect from 1st January, 1986 and it was prescribed that lecturers should have passed their post graduation with 55% marks and should also have cleared the NET/ SET examination. By subsequent Government Resolutions the State Government granted exemption from passing NET/ SET examinations subject to certain conditions. On 4th April, 2000 the University Grants Commission issued its regulations making the passing of the NET compulsory for appointment as a lecturer. By

a Government Resolution dated 13th June, 2000, the State Government adopted the UGC regulations, making them applicable to all colleges and universities in the State Government with effect from 4th April, 2000. Subsequently on 18th October, 2001 the State Government issued another Government Resolution laying down guidelines for the continuation of the services of lecturers who had not passed the NET/ SET examination. By the said Government Resolution it was envisaged that the lecturers who were not NET/ SET qualified and who had been appointed in colleges between 19th October, 1991 and 11th December, 1999 should not be terminated provided they pass the NET/ SET by December 2003. Lecturers appointed after the cut off date were liable to be terminated. The services of several lecturers appointed after 11th December, 1999 in various colleges in the State came to be terminated. A large batch of writ petitions came to be instituted in this Court at Bombay and at the Benches at Nagpur and Aurangabad. A Division Bench of the Aurangabad Bench of this Court upheld the validity of the Government Resolution dated 18th October, 2001 in **V.L. Shirsath v. State of Maharashtra** (2002(4) BCR 664), except for clause 2(b)

thereof which was quashed. The Bench directed that the services of these lecturers should not be terminated and their cases should be referred to the UGC for considering the question of relaxing the requirement of passing the NET/SET examination. A similar order was passed by a Division Bench of this Court on 18th April, 2002 in a batch of petitions. This Court held that in view of the striking down of clause 2(b) of the Government Resolution, the petitions would have to be allowed to the extent of setting aside the termination of services with consequential directions to the management to reinstate such lecturers and to transmit their papers for consideration of the issue of relaxation to the UGC.

3. The Petitioners on their part filed Writ Petition 9512 of 2004. During the pendency of the Petition, it has been stated that on 14th December, 2004, the services of the Petitioners were protected from termination. It has been stated that proposals in relation to the Petitioners came to be prepared for eventual submission to the UGC under the signature of the principal of the institution. On 2nd May, 2005 the Petition instituted by the Petitioners herein was disposed of

by the Division Bench with the following directions:

> "1. Clause 2(b) of the impugned Government Resolution dated 18.10.2001 has already been held to be unsustainable and stands quashed by the decision of this Court in the case of Vishwaprakash s/o. Laxman Sirsath and Ors. V/s. State of Maharashtra and Ors. 2003(2) Mh. L.J. 176.
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> 2. The case of the petitioners shall be examined so as to ascertain the applicability of the first proviso to clause 2 of the 1991 Regulations passed by the University Grant Commission before any adverse order affecting the service of the petitioners is passed by the concerned institution / college."

4. Though the Petitioners were working as full time lecturers, it was their grievance that they were not paid full salary in accordance with the prescribed scale. They had made a representation to the grievance committee of the University. The recommendations of the grievance committee calling upon the management to pay salary to the Petitioners after receipt of grant in aid from the Government were forwarded by the University to the management on 1st October, 2005 and the management was directed to carry out the exercise of pay fixation in accordance with the report of the 5th Pay Commission from

1st May, 1996 and to pay arrears within a period of three months. On 31st October, 2005, the management informed the Petitioners that their services were discontinued.

5. The contention of the Petitioners is that in terms of the order passed by the Division Bench of this Court the proposals relating to each of them for relaxation of the requirement of passing the NET/ SET examination had to be examined and for the aforesaid purpose the principal had already prepared a set of proposals for submission to the University. Hence, it was submitted that unless a decision was taken by the UGC upon due submission by the University it was not open for the management to terminate the services of the Petitioners. It has been urged that the termination is malafide and it was only after the report of the grievance committee, calling upon the management to pay to the Petitioners the requisite salary that the management vindictively proceeded to terminate their services.

6. In reply to the Petition an affidavit has been filed by the

management in which it has been stated that in terms of the order passed by the Division Bench of this Court on 2nd May, 2005 the case of the Petitioners was liable to be examined to ascertain the applicability of the first proviso to clause 2 of the 1991 Regulations framed by the University Grants Commission, before any adverse orders affecting the services of the Petitioners are passed by the concerned institute or college. The management in its reply has, however, contended that the proviso stipulates that those regulations shall not be applicable to such cases where the selection through the duly constituted selection committee for making appointment to the teaching posts have been prior to the enforcement of the regulations. In our view, there is merit in the submission urged on behalf of the Petitioners that the order passed by the Division Bench of this Court on 2nd May, 2005 envisaged that the services of the Petitioners should not be adversely affected unless their cases were examined to ascertain the applicability of the first proviso to clause 2 of the 1991 Regulations and it was not open to the management of the college to unilaterally do so without a verification being carried out by the University. In fact, on 4th April, 2000 the UGC has modified the

proviso in the Regulations of 1991 and as modified it reads as follows:

> "Provided that any relaxation in the prescribed qualifications can only be made by the University Grants Commission in a particular subject in which NET is not being conducted or enough number of candidates are not available with NET qualifications for a specified period only. (This relaxation, if allowed, would be given based on sound justification and would apply to affected Universities for that particular subject for the specified period. No individual applications would be entertained.)

7. In our view, it was clearly not open to the college to unilaterally determine as to whether the Petitioners were or were not entitled to the benefit of the proviso. A relaxation in the prescribed qualifications shall have to be made by the University Grants Commission and the UGC has provided that the circumstances in which this would be done is where in a particular subject, the NET examination has not been conducted or a sufficient number of candidates is not available with NET qualifications for a specified period. The conduct of the college in the present case leaves much to be desired and there is merit in the submission urged on behalf of the Petitioners that it was the report of the grievance committee

calling upon the management to pay to the Petitioners their prescribed salary which led to a reprisal in the form of a discontinuation of service.

8. The University has filed a reply in these proceedings. The University has fairly stated that Petitioners, 3, 4 and 5 were all interviewed and selected by the University selection committee in the subjects of Hindi and Economics. But these appointments were for a period of one year since a qualified candidate was not available. Thereafter, the Petitioners came to be appointed by the local selection committee to which temporary approvals were granted by the University. In our view, once an order was passed by the Division Bench on 2nd May, 2005 which was accepted by the University, the management as well as the concerned teachers, it would clearly not be open for this Court to go behind the order or to reconsider the question as to whether the services of the Petitioners were liable to be protected until the applicability of the first proviso to clause 2 of the 1991 Regulations was examined by the UGC. The Division Bench having directed that no adverse order affecting the services of the

Petitioners should be passed by the concerned institution / college until the case of the Petitioners were so examined, that order had to be enforced.

9. On behalf of the management, it has been stated that after the termination of the services of the Petitioners, the management has in certain subjects been able to appoint candidates who are NET qualified, though these appointments have also been made through the local selection committee for a stipulated duration. In our view, the ends of justice would be met if, in compliance with the directions issued by the Division Bench on 2nd May, 2005 the University is directed to forward the proposals in relation to each of the Petitioners for consideration of the UGC. While submitting the proposals to the UGC, it would be open to the University to place all relevant material before the UGC including the question as to whether NET/ SET qualified candidates are available in the concerned subjects. In so far as the orders of termination are concerned, they have been clearly in defiance of the order of the Division Bench dated 2nd May, 2005 and even before the verification could have been carried out by the UGC

in terms of the order. The orders of termination would have to be accordingly set aside and are accordingly set aside. We, however, are not inclined to direct the payment of back wages at the present stage and instead direct that until the proposals that are to be submitted by the Shivaji University are examined by the UGC, the Petitioners shall continued to be given fresh appointments commencing from the new academic year 2006-07 which will commence in June 2006. We, however, clarify that this would be subject to such directions as may be issued by the UGC, and should the UGC hold that the conditions which it has prescribed for the grant of relaxation are not fulfilled in the case of the Petitioners, the Petitioners will not be entitled to any equities and that their cases would accordingly be subject to the directions of the UGC. Unless the Shivaji University has already submitted the proposals to the UGC, we direct that the said proposals relating to the Petitioners shall be submitted no later than two weeks from today. The Petition shall accordingly stand disposed of in these terms. There shall be no order as to costs.

CHIEF JUSTICE.

(DR. D.Y. CHANDRACHUD, J.)